



1/R RCE

To: Legal Instruments Examiner

Persuant to the filing of an RCE on 30 July 2008 for Application #10/759,145 please include the following comments (which were FAX'd to the Examiner (Subramanian) but were not readable after PTO reduction/processing).

Please advise if additional fees are due.

Thank you,

A handwritten signature in cursive script that reads "Neil C. Schoen".

Neil C. Schoen

# ERGON OFFICE

HP FAX

**From:**

Dr. Neil C. Schoen

Ergon Technology Associates  
9817 Freestate Place  
Suite #4  
Gaithersburg, MD 20879

**To:**

Dr. N. Subramanian  
Primary Examiner A. U. 3691  
USPTO  
Alexandria, VA 22313-1450

**FAX Phone Number:**

301-330-5484

**FAX Phone Number:**

1-571-273-6751

**Voice Phone Number:**

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**Voice Phone Number:**

1-571-272-6751

**Number Of Pages:**

1 + 1

**Date/Time:**

7/31/2008

11:00 P.M.

**Subject:**

Missing page from RCE response FAX of 7/30/2008

**Notes:**

Dr. Subramanian-

*Re: 10/759,145*

I filed a request for continued examination (RCE) on 7/30/2008 but left out a comments page that should have accompanied the suggested claims modifications. I have provided a copy with this FAX. Please include it with the suggested amendments when you receive them.

Thank you-

Neil C. Schoen

### RCE Comments For Examiner

Item #1: Based on information I have been hearing regarding the validity of "process" or "methods" patents (the rumor is that the courts will eliminate this category), I have revised the claims, selecting the category of an "Article of Manufacture" (or product as sometimes referred to) and included new claims that will fully allow one who is "skilled in the art" to understand the patent and utilize the art.

Although this patent application would create a "paper" product, one should also be aware that a box of tissues is a paper product, and new and useful implementations of tissues would likely be granted an "article of manufacture" patent for a new or improved product of that nature.

In addition, the Examiner's Item #6 last comment, last sentence ("In re Comiskey") no longer applies, since the new claims revision submitted herein are not directed toward a "process" category. Even if it were, the equations now provided in the new RCE claims (#5, #6 and not new material) would not necessarily require a computer program (an insurance agent could "punch in" all the needed information into a pocket calculator, which does not require any application-specific external computer programs). The equations describe the process, not a computer. I have described the process fully in the new RCE claims.

Item#2: I have included all the equations necessary to create the HAVENs products within the claims section of the application by identifying the subject matter which will remove any ambiguity from the claims as in the previously submitted material. I have not introduced new material, since it all is in the specification, which I have not modified.

Item #3: The applicant takes issue with another sentence in the Examiner's Item #6 comments: re the comment "refers to physical products manufactured by a process" preceding his statement "A financial product such as the one claimed .....does not qualify as an article of manufacture under 35 USC 101." The actual HAVEN note is a physical product (like a box of tissues), which is useful to its owner, and can be bought and sold as any other "product or article of manufacture."

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**Number Of Pages:**

1 + 2

**Date/Time:**

8/2/2008

2:00 P.M.

**Subject:**

Additional RCE material supporting RCE of Re: 10/759,145

**Notes:**

Dr. Subramanian-

Please include the attached two pages as part of the above-numbered RCE. I hope they will be considered and accepted as justifiable rationale for allowing issuance of this application.

Thank you-

Neil C. Schoen

ADDITIONAL COMMENTS Re RCE #10/759,145  
(supporting RCE of 7/30/2008)

The following comments are meant to amplify the previous comments submitted with the FAX to you on 7/31/2008, and should be included in your evaluation of the RCE:

Item #4: Since this applicant has chosen a different statutory class via the claims in this RCE than that of the prior initial application, the applicant feels it necessary to provide detailed assessments of the differences in the prosecution of the application that should be taken based on the new statutory class of the claims.

The attached EXCEL sheet is intended to provide the bases for the differences that should impact the decision to allow the patent. It contains three different ways to estimate the value (profit) of a physical product (a compact disk (CD) with photos and music) to a company producing this product, at a future time, along with a related computation for licensing, and for hedging (Black-Scholes option). It should be noted that NONE of these options apply to the current RCE just submitted.

The above three calculations yield the following results over the 5 year term:

- a) The direct sales approach yields ~\$0.1 million.
- b) The licensing approach yields ~\$0.08 million.
- c) The hedging (Black-Scholes) approach yields ~\$0.06 million.

The current RCE (and the original application) was meant to provide a defined level of protection, chosen by a homeowner, based on a purchase of this protection via transfer of partial ownership of the home (via deed) to a quasi-federal organization, which would spread the risk (for example, by acquiring similar financial instruments from different regions of the country).

Given the above, the Examiner should not reject this RCE for the following reasons:

1. The claims now recite to "an article of manufacture", which does not require presentation of a computer program or software flow diagram. The applicant has now provided formulas in the claims (which are identical to those in the specification, and therefore is not new material) to compute the necessary information that the quasi-federal organization would need to reduce its risk exposure (included in Figures 1 and 2). In any event, providing formulas obviates the need for software flow diagrams coupled to computers. Needed computations could be completed with hand calculators using the formulas provided in the sequence described in the Specification.
2. The prior patents cited by the Examiner (but not relied upon) should remain the same, because the new statutory class selected in the RCE does not rely on any of the methods presented in the cited patents.

The Examiner should allow this patent with the change of statutory class, since in the event of a 12<sup>th</sup> circuit court ruling resulting in abandonment of all "method/process" patents would penalize prior patent holders.

Thank you- Neil C. Schoen

Black Scholes Option Pricing Technology Perspective Buyer

5/3/2008

Example stock

IP Example patent

Inputs  
 Stock Price Now  
 Sigma Annual  
 Risk Free Rate Annual  
 Exercise Price  
 Time To Maturity Years

0.10609212 Value Of Patent Over Life (5 years this calc)  
 0.95 Variance Of Product Value  
 0.045  
 0.085133733 Cost To Get To Market  
 5 Time To Get To Market

Outputs

1.271656297  
 -0.852608282  
 0.898252302  
 0.196938234  
 0.081909499 Now Value \$M

Present Value Formula

Source: Jupiter Research  
 ## 660 Million Sales 2006 (tracks) \*\*

Interest Rate  
 2005 Download Buyers  
 Sales Period Data

12 (single trks \$s)\*(1/3)\*(1/10) per CD  
 1.05 Sales Growth Rate

Year #	Market Share	Discount	1 Start Value **
1	12.6	0.956937799	12.05741627
2	13.23	0.915729951	12.11510725
3	13.8915	0.876296804	12.17307428
4	14.586075	0.838561344	12.23131865
5	15.31537875	0.802451047	12.28984171
6	16.08114769	0.767895738	12.34864478
7	16.88520507	0.734828458	12.4077292
8	17.72946533	0.703185127	12.46709633
9	18.61593859	0.672904428	12.5267475
10			
11			
12			

Input Data:  
 66 Million CD Sales In 2005  
 20% of market  
 1/3 go to custom CDs  
 10% profit  
 25% to licensing

Five Year Value

Profit Margin  
 1.276281563  
 5 year growth factor

Avg Value (2 formulas)  
 (assume 2 companies)  
 Ratio actual sales to discounted sales

Black-Scholes value  
 License (5 years)  
 Previous License Rate:  
 Rate 0.5% (>\$10 M gross sales/yr)  
 Gross Sales value  
 Black-Scholes value

ROI Calculation

0.042566866 5 years  
 0.24305005 5 years license

Summary:

2,000,000 customer photo sales/year  
 20 estimated consumer cost (\$s)  
 0.3 0.3 is fraction using upload to store  
 0.005 0.5% royalty rate (per year)  
 Total Royalties 5 yrs x5  
 My Sale Price (1/3) x(1/3)

ROI Calculation

0.042566866 5 years  
 0.24305005 5 years license

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ROI Calculation

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 0.24305005 5 years license

profits @ 4%

license (2)

B-S